



**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation

400 Seventh St., S.W.  
Washington, D.C. 20590

August 15, 2002

The Honorable Robert C. Byrd  
Chairman, Committee on Appropriations  
United States Senate  
S-128 Capitol Building  
Washington, D.C. 20510-6025

Dear Mr. Chairman:

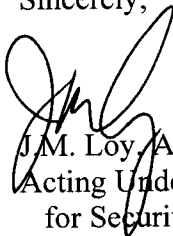
The Conference Report accompanying H.R. 4775, "Making Supplemental Appropriations for Further Recovery From and Response to Terrorist Attacks on the United States for the Fiscal Year Ending September 30, 2002, and for Other Purposes," states:

*The conferees direct that the final report of the Under Secretary [of Transportation for Security] and the DOT General Counsel regarding aviation security costs and responsibilities be submitted to the House and Senate Committees on Appropriations no later than August 15, 2002.*

The enclosed report is submitted in response to the above-quoted language.

We have sent an identical letter to Senator Stevens; the Chairman and Ranking Member, Subcommittee on Transportation, Committee on Appropriations, United States Senate; the Chairman and Ranking Member, Committee on Appropriations, House of Representatives; the Chairman and Ranking Member, Subcommittee on Transportation, Committee on Appropriations, House of Representatives; the Chairman and Ranking Member, Committee on Commerce, Science, and Transportation; United States Senate; the Chairman and Ranking Member, Subcommittee on Aviation, Committee on Commerce, Science, and Transportation, United States Senate; the Chairman and Ranking Member, Committee on Transportation and Infrastructure, House of Representatives; and the Chairman and Ranking Member, Subcommittee on Aviation, Committee on Transportation and Infrastructure, House of Representatives.

Sincerely,



J.M. Loy, ADM  
Acting Under Secretary of Transportation  
for Security



Kirk K. Van Tine  
General Counsel

Enclosure

Identical letters to be sent to:

The Honorable Ted Stevens  
Ranking Member, Subcommittee on  
Transportation  
Committee on Appropriations  
United States Senate  
S-128 Capitol Building  
Washington, D.C. 20510-6025

The Honorable Richard C. Shelby  
Ranking Member, Subcommittee on  
Transportation  
Committee on Appropriations  
United States Senate  
SD-133 Dirksen Senate Office Building  
Washington, D.C. 20510-6037

The Honorable David Obey  
Ranking Member, Committee on  
Appropriations  
U.S. House of Representatives  
H-218 Capitol Building  
Washington, D.C. 20515-6015

The Honorable Martin Olav Sabo  
Ranking Member, Subcommittee on  
Transportation  
Committee on Appropriations  
U.S. House of Representatives  
2358 Rayburn House Office Building  
Washington, D.C. 20515-6027

The Honorable John McCain  
Ranking Member, Committee on  
Commerce, Science, and Transportation  
United States Senate  
SR-254 Russell Senate Office Building  
Washington, D.C. 20510-6125

The Honorable Patty Murray  
Chairman, Subcommittee on  
Transportation  
Committee on Appropriations  
United States Senate  
SD-133 Dirksen Senate Office Building  
Washington, D.C. 20510-6037

The Honorable C. W. Bill Young  
Chairman, Committee on Appropriations  
U.S. House of Representatives  
H-218 Capitol Building  
Washington, D.C. 20515-6015

The Honorable Harold Rogers  
Chairman, Subcommittee on  
Transportation  
Committee on Appropriations  
U.S. House of Representatives  
2358 Rayburn House Office Building  
Washington, D.C. 20515-6027

The Honorable Ernest F. Hollings  
Chairman, Committee on Commerce,  
Science, and Transportation  
United States Senate  
SR-254 Russell Senate Office Building  
Washington, D.C. 20510-6125

The Honorable John D. Rockefeller IV  
Chairman, Subcommittee on  
Aviation  
Committee on Commerce, Science,  
and Transportation  
United States Senate  
SD-508 Dirksen Senate Office Building  
Washington, D.C. 20510-6125

The Honorable Kay Bailey Hutchison  
Ranking Member, Subcommittee on  
Aviation  
Committee on Commerce, Science,  
and Transportation  
United States Senate  
SD-508 Dirksen Senate Office Building  
Washington, D.C. 20510-6125

The Honorable James L. Oberstar  
Ranking Member, Committee on  
Transportation and Infrastructure  
U.S. House of Representatives  
2165 Rayburn House Office Building  
Washington, D.C. 20515-6256

The Honorable William O. Lipinski  
Ranking Member, Subcommittee on  
Aviation  
Committee on Transportation and  
Infrastructure  
U.S. House of Representatives  
2251 Rayburn House Office Building  
Washington, D.C. 20515-6257

The Honorable Don Young  
Chairman, Committee on Transportation  
and Infrastructure  
U.S. House of Representatives  
2165 Rayburn House Office Building  
Washington, D.C. 20515-6256

The Honorable John L. Mica  
Chairman, Subcommittee on Aviation  
Committee on Transportation and  
Infrastructure  
U.S. House of Representatives  
2251 Rayburn House Office Building  
Washington, D.C. 20515-6257

## **Report to Congress**

### **Reconciliation of Aviation Security Costs and Responsibilities**

The Conference Report accompanying H.R. 4775, "Making Supplemental Appropriations for Further Recovery From and Response to Terrorist Attacks on the United States for the Fiscal Year Ending September 30, 2002, and for Other Purposes," states:

*The conferees direct that the final report of the Under Secretary [of Transportation for Security] and the DOT General Counsel regarding aviation security costs and responsibilities be submitted to the House and Senate Committees on Appropriations no later than August 15, 2002.*

House of Representatives Report 107-593, at p. 170. This report is submitted in response to that item in the Conference Report.

We assume for purposes of this report that the Conferees intended that the issues to be addressed are those mentioned in Senate Report 107-156 on S. 2551, the Senate version of H.R. 4775. The relevant portion of that Report states:

*Reconciliation of aviation security costs and responsibilities.- The Committee is aware that there continues to be disagreement between the Transportation Security Administration and the Nation's air carriers as to who is responsible for the costs associated with certain continuing security functions. Examples of such areas of disagreement include the screening of caterers that serve aircraft and the employment of baggage runners that facilitate baggage screening. The Committee directs the Under Secretary for Transportation Security and the Department of Transportation General Counsel to jointly submit a report on this issue to both the House and Senate Committees on Appropriations no later than June 30, 2002. The report shall discuss in detail each area in dispute, the Department's legal position as to who is financially responsible for each function in question under the provisions of the Aviation and Transportation Security Act, and the status of compensation between the TSA and the air carriers for each of these functions. If the Department concedes that the air carriers have not been compensated for any functions that are legally the responsibility of the TSA, he shall identify whether the funds required to provide such compensation have been included within his budget request for fiscal year 2003. The Department is encouraged to work with the air carrier industry in identifying all potential areas of dispute for inclusion in this report.*

S. Rpt. 107-156, at p. 83. These issues are addressed below.

### **BACKGROUND**

The Aviation and Transportation Security Act ("ATSA"), Pub. L. 107-71, Nov. 19, 2001, created the Transportation Security Administration (TSA) within the Department of Transportation, headed by the Under Secretary of Transportation for Security ("the Under Secretary"). The ATSA assigns responsibility to the Under Secretary for "security in all modes of transportation". Pub. L. 107-71, section 101(a), codified at 49 U.S.C. §114(d). The statute also provides that the Under Secretary shall

*be responsible for day-to-day Federal security screening operations for passenger air transportation and intrastate air transportation under sections 44901 and 44935 [of title 49, United States Code].*

49 U.S.C. §114(e)(1), as added by section 101(a) of Pub. L. 107-71.

The specific security screening requirements imposed by the ATSA are as follows:

*The Under Secretary of Transportation for Security shall provide for the screening of all passengers and property, including United States mail, cargo, carry-on and checked baggage, and other articles, that will be carried aboard a passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation.*

Pub. L. 107-71, section 110(b), codified at 49 U.S.C. §44901(a).

The ATSA also provides that not later than one year after the date of its enactment, the Under Secretary shall hire and deploy at all airports in the United States where screening is required

*a sufficient number of Federal screeners [and other personnel] to conduct the screening of all passengers and property under section 44901 ... at such airports.*

Pub. L. 107-71, section 110(c)(1).

With regard to airport perimeter access security, the ATSA provides that the Under Secretary

*shall establish procedures to ensure the safety and integrity of—*

*(ii) all supplies, including catering and passenger amenities, placed aboard such aircraft, including the sealing of supplies to ensure easy visual detection of tampering; and*

*(iii) all persons providing such supplies and facilities of such persons.*

Pub. L. 107-71, section 106(a), codified at 49 U.S.C. §44903(h)(4)(C)(ii) and (iii).

On February 17, 2002, TSA assumed responsibility for certain aviation security screening responsibilities that were previously performed by the airlines for over 30 years. See Notice concerning Assumption of Civil Aviation Security Functions and Responsibilities Under Chapter 449, U.S.C., 67 Fed. Reg. 7939 (Feb. 20, 2002). TSA has arranged for contracts, no cost leases of equipment, and other agreements with airlines and private screening companies to provide screening services as TSA continues to deploy increasing numbers of TSA security screeners and TSA-furnished equipment. To date, there are 74 contracts with screening companies and 58 reimbursement agreements with airlines that perform their own screening. There are also 80 agreements with airlines, airport authorities, and other entities for these entities to lease some of the on-site screening equipment to TSA at no cost to TSA except for that needed to maintain that equipment.

## **ISSUES COVERED IN THIS REPORT**

As requested in the Senate Report, this report addresses the air carriers' assertions that TSA should assume responsibility for the costs of transporting baggage to and from screening checkpoints and the screening of catering supplies placed aboard aircraft. As to those two issues, the first has been resolved, and the second is the subject of ongoing discussions between the Department and representatives of the industry. While numerous other security-related issues are currently pending between air carriers and TSA, and new issues arise and are resolved literally every day, TSA is not currently aware of any other issues that fall within the scope of the language in the Senate Report. The Department and TSA host regular meetings with representatives of the industry to discuss and attempt to resolve issues of general applicability and importance.

### **1. Should TSA pay for salaries and expenses of baggage runners?**

#### **DOT Response**

The ATSA does not require TSA to assume, perform, or pay for all functions that may be related to aviation security or even all direct security functions. It does not require Federal employees to serve as baggage runners to move bags from ticket counters or other locations to the security screening checkpoint or any other screening location. Nor does the ATSA require that Federal employees serve as runners to transport bags from screening equipment to the point of entry to the airport's baggage handling system. The air carrier must present its passengers and their baggage to TSA screeners for inspection. After passengers and their baggage have been screened, the air carrier must transport them to the aircraft. In general, the "screening" functions contemplated by the statute are those functions that involve evaluating whether persons, or their baggage, constitute a security threat. See 49 U.S.C. §44901(a) and section 110(c)(1) of ATSA. Transferring baggage to or from the screening location is not itself a screening function, within the meaning of ATSA, and is thus not the responsibility of TSA. Any costs associated with baggage runner functions must be borne by the carriers.

### **2. Should TSA pay for security functions performed by caterers or security functions performed by carriers regarding catering?**

#### **DOT Response**

Our preliminary view has been that TSA is not responsible for performing, or bearing the costs of, security functions for catering activities. Sections 44901 and 44903 of title 49, United States Code, distinguish between security functions that must be performed by TSA and security functions for which TSA must set standards. The ATSA requires that security measures be in place for persons and property entering secured areas of airports and requires TSA to "establish procedures to ensure the safety and integrity of catering and passenger amenities, placed aboard such aircraft... and all persons providing such supplies." Pub. L. 107-71, section 106(a), codified at 49 USC §44903(h)(4)(C). TSA is authorized and responsible to determine, through issuance of orders, regulations, or security directives or through approval of security programs, the entities that are required to carry out these requirements at non-Federal expense. The ATSA does not however, require TSA to implement, directly perform, or pay for security measures

regarding catering supplies that will be placed aboard aircraft. The ATSA requires TSA to conduct screening of all property that will be carried aboard an aircraft, including United States mail, cargo, and carry-on and checked luggage. Pub. L. 107-71, section 110(b), codified at 49 U.S.C. §44901(a). In general, the types of property subject to security measures performed or paid for by TSA are items transported by air carriers for hire. In contrast, catering services and other amenities are not property items that air carriers transport for hire, but rather are part of the service voluntarily provided by the air carriers. Finally, neither the Department's FY 2002 Supplemental Appropriation nor its FY 2003 Budget request contain any funding to pay for the assumption of security functions regarding catering.

The Department, TSA and the air carriers have been engaged for several months in a dialogue regarding catering service security issues. The Department has on several occasions requested a factual description of what security procedures are at issue and a breakdown of the estimated costs of those procedures. This week, the Air Transport Association (ATA) provided orally an estimate that the aggregate costs to its members of the security procedures regarding catering total approximately \$85 million, but has not yet provided information about what specific procedures are included within that estimate or exactly how they are performed. The Department understands that those details will be provided shortly, and at that time, the Department and representatives of the industry will discuss and attempt to resolve this issue. The Department will supplement this report within 30 days with information regarding the status of those discussions.